

OPEN SESSION
AGENDA ITEM
54-131 MARCH 2018
PRO COMM III.A.

DATE: March 1, 2018

TO: Members, Board Committee on Programs
Members, Board of Trustees

FROM: Amy Nuñez, Interim Director, Office of Admissions
Mark Torres-Gil, Program Manager, Moral Character Determinations

SUBJECT: Proposed Amendment to Admissions Rule re Qualification of Out-of-State Attorney Applicants to File Moral Character Determination Applications

EXECUTIVE SUMMARY

At its June 24, 2017 meeting, the Committee of Bar Examiners (Committee) approved in principle a proposed amendment to Title 4, Division 1, Chapter 4, Rule 4.41 of the *Rules of the State Bar* (Admissions Rules), which would, if adopted, clarify the criteria for submission of moral character determination applications by out-of-state attorneys who have been suspended for administrative reasons, subject to a public comment period and final approval by the Board of Trustees. Subsequently, at the Committee's request, the Board Committee on Admissions and Education approved a 45-day public comment period.

The proposed rule amendment was circulated for public comment, which ended October 25, 2017, and no public comments were received. During its December 2017 meeting, the Committee adopted the rule amendment, subject to the Board of Trustees' approval.

BACKGROUND

Presently, attorneys from other jurisdictions seeking to practice law in California are not allowed to file a moral character determination application if suspended or disbarred according to Rule 4.41, which states:

Rule 4.41 Application for Determination of Moral Character

- (A) An applicant must submit an Application for Determination of Moral Character with required fingerprints and the fee set forth in the Schedule of Charges and Deadlines. An attorney who is suspended or disbarred, has resigned with disciplinary charges pending or is otherwise not in good standing for disciplinary reasons in any jurisdiction may not submit an application.

The language of Rule 4.41 appears to restrict attorney applicants from applying for moral character determinations who have been disciplined in the state where they have practiced,

although there is ambiguity with regard to the word “suspended.” A strict reading of the rule would suggest that anyone suspended, for any reason, including administrative reasons like non-payment of fees, not current CLE requirements, etc. would be prohibited from becoming a lawyer in California.

At its June 24, 2017 meeting, the Committee of Bar Examiners (“Committee”) adopted in principle a proposed amendment to Rule 4.41 of the *Admissions Rules*, which clarifies that out-of-state applicants will not be disqualified from submitting a moral character application solely because they have been administratively suspended from practice in another jurisdiction. Subsequently, at the Committee’s request, the Board Committee on Admissions and Education approved a 45-day public comment period.

DISCUSSION

The following amendment was circulated for a 45-day public comment period:

Rule 4.41 Application for Determination of Moral Character

An applicant must submit an Application for Determination of Moral Character with required fingerprints and the fee set forth in the Schedule of Charges and Deadlines. An attorney who is suspended for disciplinary reasons or disbarred, has resigned with disciplinary charges pending or is otherwise not in good standing for disciplinary reasons in any jurisdiction may not submit an application.

No public comments were received.

It is recommended that the rule be clarified as indicated above, so it is clear that those who have been administratively suspended are eligible to file a moral character determination application. These applicants, however, would still have to acquire a Positive determination of good moral character in order to be admitted to the practice of law in California.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

Title 4, Division 1, Chapter 4, Rule 4.41

BOARD BOOK IMPACT

None

BOARD GOALS & OBJECTIVES

None

BOARD COMMITTEE RECOMMENDATIONS

The Board Committee on Programs recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approve the proposed amendment to the Admissions Rules as attached, which clarifies the rules for qualification of out-of-state attorney applicants to file Moral Character Determination applications.

ATTACHMENT(S) LIST

- A.** Current and Proposed Amended Admissions Rule 4.41

ADMISSIONS RULE 4.41

CURRENT VERSION OF ADMISSIONS RULE 4.41(A):

An applicant must submit an Application for Determination of Moral Character with required fingerprints and the fee set forth in the Schedule of Charges and Deadlines. An attorney who is suspended or disbarred, has resigned with disciplinary charges pending or is otherwise not in good standing for disciplinary reasons in any jurisdiction may not submit an application.

PROPOSED AMENDED VERSION OF ADMISSIONS RULE 4.41(A):

An applicant must submit an Application for Determination of Moral Character with required fingerprints and the fee set forth in the Schedule of Charges and Deadlines. An attorney who is suspended *for disciplinary reasons* or disbarred, has resigned with disciplinary charges pending or is otherwise not in good standing for disciplinary reasons in any jurisdiction may not submit an application.